IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 26 OF 2005.

Mrs. Ana Rosaline Rodrigues,
residing at House No. 297,
Bamman Vaddo, Candolim,
Bardez, Goa. .... Appellant.

Versus

Mrs. Girgolina Eslinda Dias,
C/o Mr. Inacio Fernandes,
House No. 143, Dando,
Candolim, Bardez, Goa. .... Respondent.

Shri V. Menezes, Advocate for the Appellant.

Ms. A. Razaq, Advocate for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 19th JANUARY, 2006.

ORAL ORDER:

Heard the learned Advocates for the parties.

2. The learned Advocate appearing for the respondent has fairly conceded that the Court below could not have disposed of the application before ascertaining the disposable quota by the deceased mother of the parties. She has also submitted that the points arising under Article 1383 of

the Code are also required to be considered while deciding the claim for exclusion of the property. It is not necessary to go into all those controversies raised in the matter considering the fact that the application was made for exclusion of the property on the ground of execution of the Will under which the property in question is sought to have been exclusively bequeathed in favour of the Appellant. Bearing in mind the provisions in relation to Inventory proceedings, it was necessary for the Court below to consider this application at the appropriate time and more particularly after ascertaining the disposable quota of the person on whose death the Inventory proceedings are initiated. The application having been disposed of at premature stage without considering various aspects of the matter and without giving opportunity to the parties to lead evidence in support of their rival contentions, the impugned order cannot be sustained and is liable to be set aside and is accordingly set aside. The application filed by the appellant should be considered at the appropriate stage and after affording opportunity to the parties to lead evidence in support of their rival contentions. All the issues which may arise for consideration of such application are kept open.

3. With these observations, the appeal is allowed. The impugned order is hereby set aside. The application filed by the appellant to be disposed of in accordance with the provisions of law, bearing in mind the

observations made hereinabove. Order accordingly. No costs. Appeal stands disposed of.

R.M.S. KHANDEPARKAR, J.

sl.